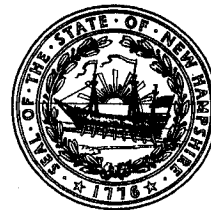




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

March 16, 2006

Frank T. Donahoe
364 Route 11 – Box 204
New Durham, NH 03855

Re: Docket No. AF 05-089 – Frank T. Donahoe

Dear Mr. Donahoe:

Enclosed for your records is a copy of the fully executed and accepted Motion to Accept Settlement Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Scalfani,
Legal Assistant

cc: Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Lynn Woodard, DES WMD
Tom Beaulieu, DES WMD
Susan Hanamoto, DES WMD

Frank T. Donahoe
364 Route 11 Box 204
New Durham, NH 03855

Re: Tim's Station, 364 Route 11,
New Durham, NH
UST ID #0-113134

**ADMINISTRATIVE FINE
AND LICENSE ACTION
No. AF 05-089**

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Frank T. Donahoe, parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. Frank T. Donahoe is the registered facility owner of one underground storage tank ("UST") at the Tim's Station, facility ("the Facility"), further identified as UST # 0-113134, located on real property at 364 Route 11, New Durham, NH ("the Property"). Frank T. Donahoe signed the Registration for Underground Storage Tank Systems for the Facility, received by DES on May 10, 1995, as the owner.
3. On November 14, 2005, the Division issued Notice of Proposed Administrative Fine and License Action No. AF 05-089 ("the Notice") to Frank T. Donahoe seeking fines totaling \$2,000 for violations of New Hampshire Administrative Rules Part Env-Wm 1401.
4. The Notice cited Frank Donahoe for violating Env-Wm 1401.30(e) by failing to have the line leak detectors tested annually for the split 12,000-gallon gasoline UST (Tank 4). Pursuant to Env-C 607.03(j) the Division sought a fine of \$2,000.
5. In order to settle this matter, the Division and Mr. Donahoe have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.
6. Of the proposed fine in the amount of \$2,000, 20% or \$400 shall be suspended due to this being a one-time unintentional violation. An additional 20% or \$400 shall be suspended due to Mr. Donahoe's good faith effort in returning the Facility into compliance. An additional 20% or \$400 shall be suspended due to Frank Donahoe's history of compliance at this Facility. An additional 20% or \$400 shall be suspended due to the Facility's small business status.
7. The suspended portion of the proposed fine, in the amount of \$1,600 is contingent upon Frank T. Donahoe maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of

two years from the date of the execution of this Agreement. If Frank Donahoe fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$1,600 shall become due and payable immediately. If Frank Donahoe maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

8. Frank Donahoe agrees to pay the remaining \$400 upon execution of this Agreement.

9. Payment under Paragraph #8 and any payment that becomes due pursuant to Paragraph #7 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

10. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

11. By executing this Agreement, Frank Donahoe waives his right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.


12. The effective date of this Agreement will be the date on which it is signed by Frank T. Donahoe, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

13. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

Date

COPY

Frank T. Donahoe, Owner

DES Waste Management Division

COPY

3/13/06
Date

Anthony P. Giunta, P.G., Director

This Motion to Accept Settlement agreement is granted this 15th day of MARCH, 2006.

COPY

Michael P. Nolin, Commissioner
Department of Environmental Services